



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Brian E. Bogue, President
Brian Bogue Diesel Repair and Welding, LLC
boguedieselrepair@gmail.com

Re: Finding of Violation
Brian Bogue Diesel Repair and Welding, LLC
Paul, Idaho 83347

Dear Mr. Bogue:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Brian Bogue Diesel Repair and Welding, LLC (Brian Bogue Diesel or you) for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522 (a)(3)(B). As summarized in the attached FOV, EPA has determined that you have manufactured, sold, offered to sell, and installed parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. In addition, EPA has determined that you have failed to provide information to EPA required by Section 208(a) of the CAA, 42 U.S.C. § 7542(a) and in violation of Section 203(a)(2)(A), 42 U.S.C. §§ 7522 (a)(2)(A).

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Jack Pelletier. You may call him at (312) 353-9062 or email him at pelletier.jack@epa.gov to request a conference. You should make the request within 10 calendar-days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Sarah Marshall
Chief, Air Enforcement and Compliance Assurance Section (MI/WI)

cc: John Keenan
Air Enforcement Specialist
Enforcement and Compliance Assurance Division
U.S. EPA Region 10
keenan.john@epa.gov

Charlotte Papp
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vehicle emissions. The COC will include, among other things, a description of the engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. Engine manufacturers employ many devices and elements of design to meet emission standards. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.
6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, engine manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Clean Gas Induction (CGI), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR) systems.
7. Engine and vehicle manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x”)
8. Modern motor vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control emission control devices and elements of design, such as the EGR/CGI, DOC, DPF, and SCR systems and the engine fueling strategy.
9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically- generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
10. Section 203(a)(3)(A) of the CAA prohibits “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.” This is also referred to as “tampering.”
11. Section 203(a)(3)(B) of the CAA prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” These parts or components are also referred to as “defeat devices.”

12. The CAA does not exempt “off-road use only” or “competition only” motor vehicles or motor vehicle engines. The definitions for motor vehicle at CAA § 216(2); 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703 make no exemption for motor vehicles or motor vehicle engines used for competition. More generally, these definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

EPA Information Collection Authority

13. Section 208(a) of the CAA, 42 U.S.C. § 7542(a), requires “every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of [Title II Part A of the CAA], to establish and maintain records ...make reports and provide information [EPA] may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with [Title II Part A of the CAA] and regulations thereunder, or to otherwise carry out the provision of [Title II Part A of the CAA], and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.”
14. Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), prohibits any person from failing to provide to EPA information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a); *See also* 40 C.F.R. § 1068.25.
15. 18 U.S.C. 1001(a) of the Crimes and Criminal Procedures Code states that, “whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully – (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism, imprisoned not more than 8 years”

Background

16. Brian Bogue Diesel is an engine and automotive repair shop located in Paul, Idaho.
17. Brian Bogue Diesel is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
18. On April 30, 2020, EPA issued an Information Request (First Request) to Brian Bogue Diesel pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The First Request sought information related to Brian Bogue Diesel ’s purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period of January 1, 2017 to the date of the Request.
19. On May 19, 2020, Brian Bogue Diesel submitted a response (First Response) to the First Request stating that from January 1, 2017 to September 17, 2020, the company had not

“manufactured, offered for sale, sold and/or installed any part, component, or product (such as an EGR block plate, straight exhaust pipe, tune, tuner, ECM re-calibration, or other similar product) which bypass, defeat, or render inoperative any emission control components or elements of design, or emissions related parts or components”

20. On May 29, 2020, Region 5 counsel reached out to the opposing counsel and asked for clarification and a re-evaluation of Brian Bogue Diesel’s First Response. The opposing counsel stated that they would speak with the owner and get back to EPA with more information.
21. Between May 30 and November 15, 2020, EPA made multiple attempts to contact Brian Bogue Diesel and opposing counsel via email and telephone in an attempt to gain clarification on the First Response, but EPA was unable to reach the company or opposing counsel.
22. On November 16, 2020, EPA issued a Second Information Request (Second Request) to Brian Bogue Diesel pursuant to Section 208 of the CAA, 42 U.S.C. § 7542. The Second Request sought information related to Brian Bogue Diesel’s purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period of April 1, 2017 to the date of the Second Request. The Second Request asked for “yes or no” responses to six questions, as well as receipts or invoices.
23. On December 2, 2020, EPA received an email from the opposing counsel, informing EPA that new counsel will be representing Brian Bogue Diesel, as well as requesting an extension for the response, which was granted.
24. On December 10, 2020, Brian Bogue Diesel submitted a response (Second Response) to the Second Request under new counsel. In the Second Response, Brian Bogue Diesel admitted to purchasing EGR block off plates and ECM tunes, but refused to supply a complete response.
25. On January 13 and February 4, 2020, EPA and Brian Bogue Diesel held conference calls to discuss Brian Bogue Diesel’s failure to fully respond to the Second Request. EPA requested that Brian Bogue reevaluate its responses to EPA. Based on these discussions Brian Bogue Diesel agreed to re-review the company’s response to the First Request and consider whether it wanted to supplement its response.
26. On February 11, 2021, Brian Bogue Diesel submitted a supplemental response (Third Response) to the First Request. The Third Response included the approximate number of illegal parts transactions, average sales price, total sales, and an approximation of the economic benefit from such transactions. No invoices or additional information was provided by Brian Bogue Diesel as was required by the First Request.

Violations

27. The parts and/or components sold by Brian Bogue Diesel were intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2), and were designed for use on makes and models of motor vehicles for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards.
28. The parts and/or components sold by Brian Bogue Diesel bypass, defeat, and/or render inoperative elements of design (*e.g.*, emissions-related elements of the ECM) installed on or in a motor vehicle or motor vehicle engine and allow for the removal or rendering inoperative of emission control devices (*i.e.*, EGR/CGI, DOC, DPF, and/or SCR systems(s)) without illuminating a malfunction indicator lamp in the vehicle’s OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device. These parts and/or components are defeat devices.
29. Between January 1, 2017 and April 29, 2020, Brian Bogue Diesel violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling, offering to sell, and/or installing parts or components, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principle effect of the part or component was to bypass, defeat or render inoperative elements of design or emission controls, such as the EGR/CGI, DOC, DPF, SCR, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines that were in compliance with Title II of the CAA, where Brian Bogue Diesel knew or should have known that such part or component was being offered for sale or installed for such use or put to such use.
30. As of the date of this FOV, Brian Bogue Diesel has failed to provide all of the documents and information required by EPA’s First and Second Information Request, in violation of Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A) and 40 C.F.R. § 1068.25 which prohibit any person from failing to provide to EPA information required under Section 208(a) of the CAA, 42 U.S.C. § 7542(a).

Environmental Impact of Violations

31. These violations resulted in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulate containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

32. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,876 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division